State of Wisconsin
2013 - 2014 LEGISLATURE

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# 2013 ASSEMBLY BILL 874

March 18, 2014 - Introduced by Representatives C. TAYLOR, CLARK, GENRICH, OHNSTAD and WRIGHT, cosponsored by Senators RISSER, ERPENBACH and HARRIS. Referred to Committee on Consumer Protection.

AN ACT ***to create*** 97.26 of the statutes; **relating to:** labeling of genetically engineered food and granting rule-making authority.

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***Analysis by the Legislative Reference Bureau***

***Genetic engineering***

This bill imposes requirements relating to the labeling of food that is produced through genetic engineering. The bill defines "genetic engineering" as the alteration of the genetic material of an organism using specified techniques, including recombinant deoxyribonucleic acid (DNA) techniques, techniques that involve the introduction into an organism of hereditary materials prepared outside of the organism, such as through microinjection, and techniques that involve the fusion of cells in a way that does not occur naturally.

The requirements in the bill take effect one year after the bill is enacted.

***Labeling***

The bill generally prohibits a retailer, such as a grocer, from selling a packaged food produced through genetic engineering unless the package is clearly labeled to indicate that the food is produced through genetic engineering. The bill generally prohibits a retailer from selling an unpackaged food produced through genetic engineering unless the retailer places on the shelf or bin where the food is sold a sign indicating that the food is produced through genetic engineering.

The bill also generally prohibits a retailer from selling a food produced through genetic engineering that is labeled as "natural."

***Exemptions***

The bill contains a number of exemptions to the labeling requirements, including those described below.

Under the bill, the labeling requirements do not apply to food that is produced from an animal that was not genetically engineered, regardless of whether the animal was fed or injected with a food or drug produced through genetic engineering. The labeling requirements do not apply to unpackaged food that is sold in a restaurant or is prepared and sold for takeout, for example, in a grocery store. The bill also exempts from the labeling requirements, until July 1, 2020, processed foods that contain ten or fewer ingredients produced through genetic engineering if the weight of each is not more than 0.45 percent of the weight of the food.

The bill allows a retailer to rely on a sworn statement from a supplier that a food was not knowingly produced through genetic engineering or on a determination by an independent organization, based on sampling and testing, that a food was not produced through genetic engineering. The bill requires the Department of Agriculture, Trade and Consumer Protection to promulgate rules specifying requirements for sampling and testing by independent organizations.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 97.26 of the statutes is created to read:

**97.26 Labeling of genetically engineered food. (1)** DEFINITIONS. In this section:

(a) "Enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon the completion of the reactions.

(b) "Genetic engineering" means the alteration of the genetic material of an organism using any of the following methods:

1. In vitro nucleic acid techniques.

2. Fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, if the donor cells or protoplasts do not originate from within the same taxonomic group as the

organism, in a way that does not occur by natural multiplication or natural recombination.

(c) "In vitro nucleic acid techniques" means techniques, including recombinant deoxyribonucleic acid or ribonucleic acid techniques, that use vector systems and techniques involving the direct introduction into an organism of hereditary materials, including nucleic acid, prepared outside the organism, such as through microinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.

(d) "Organism" means any biological entity capable of replication, reproduction, or transferring of genetic material.

(e) "Processed food" means a food other than a raw agricultural commodity, including a food produced from a raw agricultural commodity that has been subjected to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

(f) "Processing aid" means any of the following:

1. A substance that is added to a food during the processing of the food, but that is removed from the food before the food is packaged in its finished form.

2. A substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of those constituents naturally found in the food.

3. A substance that is added to a food for its technical or functional effect in the processing of the food, but that is present in the food in its finished form at levels that do not have any technical or functional effect in the finished food.

(g) "Retailer" means a person who sells food to consumers.

**(2)** PROHIBITIONS. Except as provided in sub. (3), a retailer may not do any of the following:

(a) Sell a raw agricultural commodity produced through genetic engineering that is packaged unless the package is clearly and conspicuously labeled with the words "Produced through genetic engineering."

(b) Sell a raw agricultural commodity produced through genetic engineering that is not packaged unless the retailer places a clear and conspicuous sign that states "Produced through genetic engineering" on the shelf or bin where the raw agricultural commodity is displayed.

(c) Sell a processed food produced, in whole or in part, through genetic engineering that is packaged unless the package is clearly and conspicuously labeled with the words "Partially produced through genetic engineering" or "May be partially produced through genetic engineering."

(d) Sell a processed food produced, in whole or in part, through genetic engineering that is not packaged unless the retailer places a clear and conspicuous sign that states "Partially produced through genetic engineering" or "May be partially produced through genetic engineering" on the shelf or bin where the processed food is displayed.

(e) Sell a food produced, in whole or in part, through genetic engineering that is labeled as "natural," "naturally made," "naturally grown," or "all natural" or any words of similar meaning that would have a tendency to mislead a consumer.

**(3)** EXEMPTIONS. (a) The prohibitions in sub. (2) do not apply to the sale of any of the following:

1. A food consisting entirely of, or derived entirely from, an animal not produced through genetic engineering, regardless of whether the animal was fed or injected with any food or drug produced through genetic engineering.

2. A food purchased by a retailer if the retailer obtains a statement, made or subscribed under oath or affirmation or in compliance with s. 887.015, from the person from whom the retailer purchases the food that the food was not knowingly produced, in whole or in part, through genetic engineering and has been segregated from and not knowingly commingled with food that may have been produced through genetic engineering.

3. A raw agricultural commodity grown by the retailer if the retailer did not knowingly produce the raw agricultural commodity through genetic engineering.

4. A processed food that would be subject to sub. (2) solely because it is produced using one or more processing aids or enzymes produced through genetic engineering.

5. An alcohol beverage, as defined in s. 125.02 (1).

6. Until July 1, 2020, a processed food that contains one or more, but fewer than 11, ingredients produced through genetic engineering, if the weight of each individual ingredient is not more than 0.45 percent of the weight of the processed food.

7. A food that an independent organization determines, using a sampling and testing procedure that complies with the rules promulgated under par. (c), was not produced, in whole or in part, through genetic engineering and has not been commingled with food produced through genetic engineering.

8. A food that is labeled as "organic" in accordance with the federal Organic Food Products Act, 7 USC 6501 to 6523.

9. A food that is not packaged for retail sale if one of the following applies:

a. The food is a processed food prepared and intended for immediate consumption.

b. The food is sold in a restaurant or other operation that is primarily engaged in the sale of food that is prepared and intended for immediate human consumption.

10. A medical food, as defined in 20 USC 360ee (b) (3).

(b) In providing a statement under par. (a) 2., a person who sells food to a retailer may rely on a statement, made or subscribed under oath or affirmation or in compliance with s. 887.015, from the person's supplier that the food was not knowingly produced, in whole or in part, through genetic engineering and has been segregated from and not knowingly commingled with food that may have been produced through genetic engineering.

(c) The department shall promulgate rules specifying requirements for sampling and testing procedures for the purposes of par. (a) 7. In the rules, the department shall require the use of a statistically valid sampling plan that is consistent with the recommendations of internationally recognized entities, such as the International Organization for Standardization or the Grain and Feed Trade Association. In the rules, the department shall also require all of the following:

1. The use of a testing procedure that is consistent with the most recent version of the Codex Alimentarius Commission publication Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods, CAC/GL 74–2010.

2. The use of a testing procedure that does not rely on the testing of processed foods in which no deoxyribonucleic acid is detectable.

**SECTION 2. Effective date.**

(1) This act takes effect on the first day of the 13th month beginning after publication.

**(END)**